

Environmental Covenant

When recorded, return to:

David Hrobuchak, PADEP, 909 Elmerton Avenue, Harrisburg, PA 17110-8200

GRANTOR: Pennsylvania Fish and Boat Commission (PFBC)

PROPERTY ADDRESS: PFBC Kaercher Creek Lake, 3401 Old Route 22, Hamburg, PA 19526

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed pursuant to the Pennsylvania Uniform Environmental Covenants Act, Act No. 68 of 2007, 27 Pa. C.S. §§ 6501 – 6517 (UECA). This Environmental Covenant subjects the Property identified in Paragraph 1 to the activity and/or use limitations in this document. As indicated later in this document, this Environmental Covenant has been approved by the Pennsylvania Department of Environmental Protection (Department).

1. **Property affected.** The property affected (Property) by this Environmental Covenant is located in Windsor Township, Berks County and identified as the northeasterly portion of County Parcel Property ID #94449518419463 and the northwesterly portion of Property ID #94449500623164 and described in Berks County Deed Book 1535, page 902; Deed Book 1535, page 707; Deed Book 1535, page 720 and Deed Book 1534, page 67. The postal street address of the Property is: 3401 Old Route 22, Hamburg, PA 19526. The latitude and longitude of the center of the Property affected by this Environmental Covenant is: N 40°33'38", W -75°58'04". The DEP Primary Facility ID# is: 623221.

A map depicting the Property is attached as Exhibit A and a map depicting the area that remediation activities were completed is attached as Exhibit B.

2. **Property Owner / GRANTOR / GRANTEE.** Pennsylvania Fish and Boat Commission is the owner of the Property and the GRANTOR and GRANTEE of this Environmental Covenant.

3. The mailing address of the owner is: Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000.

4. **Description of Contamination & Remedy.**

In the summer of 2013, the US Environmental Protection Agency conducted a comprehensive site investigation to determine the extent and degree of waste and/or contaminated soil at the properties that encompass the Kaercher Creek Lake Battery Casings Site (Site). The Land Recycling Program Regulations, Statewide Health Residential Direct Contact standard for lead in soil is 500 mg/kg and the Soil-to-

Groundwater standard for Used Aquifers is 450 mg/kg while the sediment standard for lead in wetlands and waterways is 128mg/kg. The sample results showed levels of lead above the 450 mg/kg standard for soils at various locations on the Property. Lead contamination was also detected in close proximity to a drainage way that discharges into Kaercher Creek Lake. The extent and location of the contamination is described in detail in the Trip Report issued by the U.S. Environmental Protection Agency in December of 2013.

The Kaercher Creek Park Work Plan, dated January 16, 2014, details the remediation and restoration activities undertaken at the Kaercher Creek Lake Property. Due to the nature of the remediation, lead contaminated soil above the applicable standard were left in place on this Property because it was not economically feasible or practical to remove it from the site. All areas within the site that were found to have lead contaminated soil above statewide standards for direct contact and soil-to-groundwater for used aquifers were encapsulated under 1.5 feet of clean fill. The clean fill was graded, and compacted, then covered with 0.5 feet of topsoil. All disturbed areas were planted with grass seed to establish an easily maintainable and erosion resistant grassy cover.

Copies of the Administrative Record for the Kaercher Creek Lake Battery Casings Site response action are maintained at the Windsor Township Municipal Building and the DEP Southcentral Regional Office in Harrisburg, PA.

5. **Activity & Use Limitations.** The Property is subject to the following activity and use limitations, which the then current owner of the Property, and its tenants, agents, employees and other persons under its control, shall abide by:

Soil Use Limitation – If future Property development includes excavation activities, best management practices shall be used to limit worker exposure and decrease the potential spread of lead (e.g., impacted soils should be staged, covered, and secured to prevent surface water runoff). Material excavated and removed from the Property shall be managed, transported, and disposed, recycled, or re-used in compliance with all federal, state, and local laws, regulations, and ordinances pertaining to the environment and occupational safety.

6. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this Environmental Covenant shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and shall provide the recorded location of this Environmental Covenant.

7. **Compliance Reporting.** The current owner of the Property shall within 30 days submit to the Department written documentation of any / all of the following: noncompliance with the activity and use limitations in this Environmental Covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if the building or

proposed site work will affect the contamination on the Property subject to this Environmental Covenant.

8. **Access by the Department.** In addition to any rights already possessed by the Department, this Environmental Covenant grants to the Department a right of reasonable access of the Property in connection with implementation or enforcement of this Environmental Covenant.

9. **Recording & Proof & Notification.** The Department shall file this Environmental Covenant with the Recorder of Deeds in Berks County. The Department shall send a file-stamped copy to Windsor Township and the Pennsylvania Fish and Boat Commission.

10. **Termination or Modification.**

(a) This Environmental Covenant may only be terminated or modified in accordance with 27 Pa. C.S. §§ 6509 or 6510, or in accordance with this paragraph.

(b) This Environmental Covenant may be amended or terminated as to any portion of the Property that is acquired for use as state highway right-of-way by the Commonwealth provided that: (1) the Department waives the requirements for an environmental covenant and for conversion pursuant to 27 Pa. C.S. §6517 to the same extent that this Environmental Covenant is amended or terminated; (2) the Department determines that termination or modification of this Environmental Covenant will not adversely affect human health or the environment; and (3) the Department provides 30-days advance written notice to the current property owner, each holder, and, as practicable, each person that originally signed the Environmental Covenant or successors in interest to such persons.

(c) This Environmental Covenant shall terminate upon attainment, in accordance with 35 P.S. §§ 6026. 101 – 6026.908, with an unrestricted use remediation standard for the above-described contamination at the Property. The Department must approve, in writing, of such termination.

(d) In accordance with 27 Pa. C.S. § 6510(a)(3)(i), Grantor hereby waives the right to consent to any amendment or termination of the Environmental Covenant by consent; it being intended that any amendment to or termination of this Environmental Covenant by consent in accordance with this Paragraph requires only the following signatures on the instrument amending or terminating this Environmental Covenant: (i) the Holder at the time of such amendment or termination; (ii) the then current owner of the Property and (iii) the Department.

11. **Department's address.** Communications with the Department regarding this Environmental Covenant shall be sent to: Manager, Southcentral Region, Environmental Cleanup and Brownfields Program, 909 Elmerton Avenue, Harrisburg PA 17110.

APPROVED, by Commonwealth of Pennsylvania,
Department of Environmental Protection

Date:

By: _____

Name:

Title: Env. Cleanup & Brownfields Program Manager

COMMONWEALTH OF PENNSYLVANIA)

)

COUNTY OF DAUPHIN)

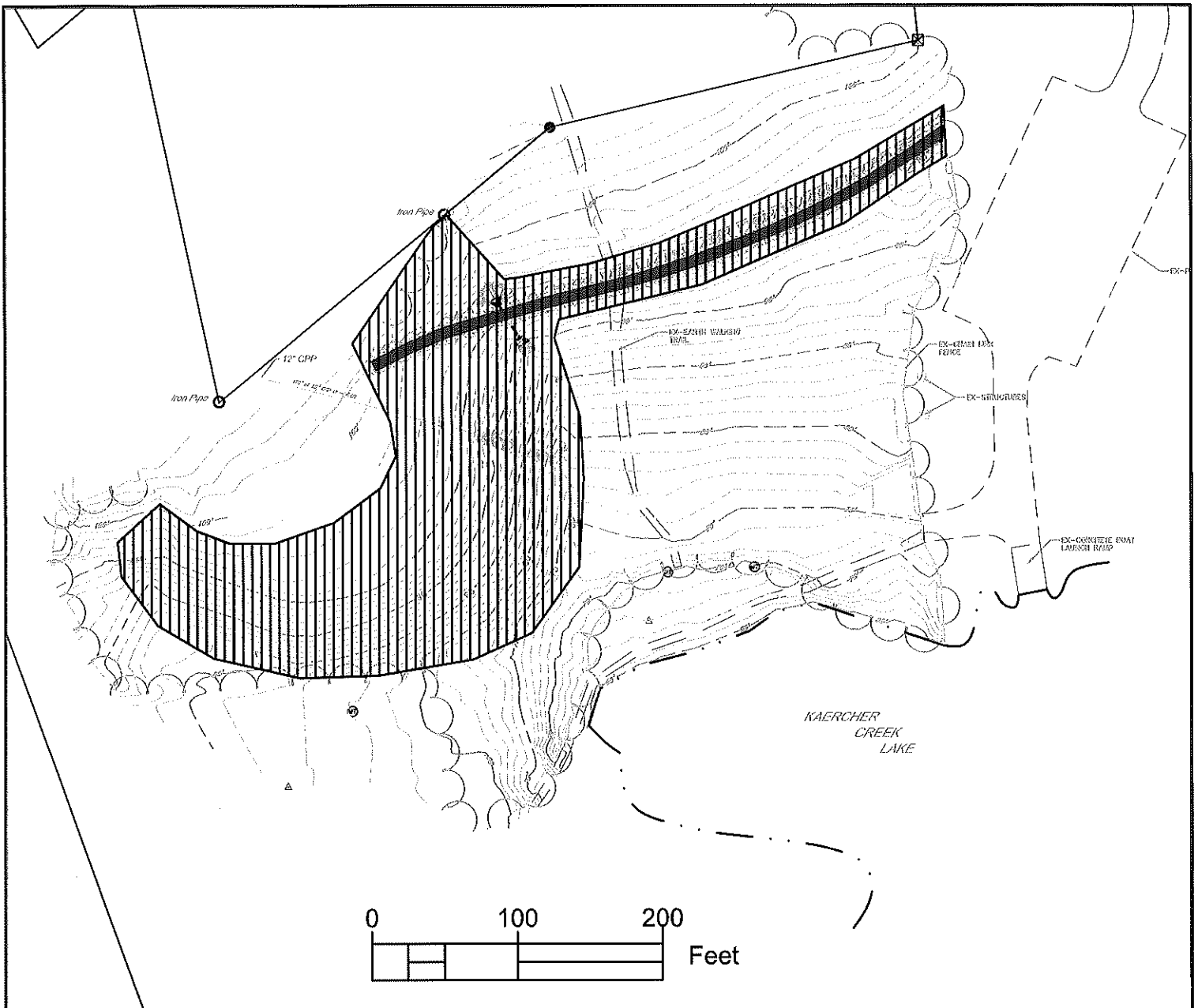
SS:

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Environmental Cleanup and Brownfields Program Manager of the Commonwealth of Pennsylvania, Department of Environmental Protection, Southcentral Regional Office, whose name is subscribed to this Environmental Covenant, and acknowledged that he executed same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Notary Public





GENERAL NOTES:

1. TOPOGRAPHIC SURVEY WAS PROVIDED BY: THE PENNSYLVANIA FISH AND BOAT COMMISSION, SURVEYED IN OCTOBER 2017.
2. HATCHING REPRESENTS AREAS THAT REMEDIATION ACTIVITIES WERE COMPLETED.

LEGEND:

| | |
|--|-------------------------|
| | PROPERTY LINE |
| | EDGE OF ROAD |
| | EDGE OF WATER |
| | MAJOR CONTOUR LINE (5') |
| | MINOR CONTOUR LINE (1') |
| | RIP RAP |
| | ASPHALT WALKING TRAIL |

| KAERCHER CREEK LAKE BATTERY ABATEMENT PROJECT PFBC PROPERTY ID. FC-182L BERKS COUNTY, PENNSYLVANIA | | |
|---|-------------------|-------------|
| DRAWN BY PEU | DATE 7/3/2018 | DRAWING NO. |
| CHECKED BY | SCALE AS-NOTED | EXHIBIT B |